

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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MICHAEL J. MORELAND, *et al.*,

Plaintiffs,

v.

17-CV-1034-LJV-JJM  
DECISION & ORDER

THE SPORTSMAN'S GUIDE, INC.,

Defendant.

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The plaintiffs, Michael and Kathryn Moreland, allege that Michael was injured while using a "climbing stick" manufactured by the defendant, The Sportsman's Guide, Inc. ("Sportsman's"). Docket Item 53 (amended complaint). On October 16, 2017, this Court referred this case to United States Magistrate Judge Jeremiah J. McCarthy for all proceedings under 28 U.S.C. § 636(b)(1)(A) and (B). Docket Item 4. On October 17, 2022, Sportsman's moved for summary judgment, Docket Item 110, and on January 10, 2023, the Morelands responded and cross-moved for partial summary judgment, Docket Item 132.

After those motions were fully briefed, Docket Items 141, 142, 146, Judge McCarthy issued two Reports and Recommendations ("R&Rs") finding that (1) Sportsman's motion for summary judgment should be "denied to the extent that it seeks a determination that [Sportsman's] was not the seller of the climbing stick," Docket Item 172; (2) "the Morelands' motion for partial summary judgment seeking a contrary determination" should "likewise be denied," *id.*; (3) "the Morelands' claims for manufacturing defect, breach of warranty[,], and punitive damages [should] be dismissed," Docket Item 174; and (4) Sportsman's motion for summary judgment should

“otherwise be denied,” *id.* The parties did not object to the R&Rs, and the time to do so now has expired.<sup>1</sup> See 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(2).

A district court may accept, reject, or modify the findings or recommendations of a magistrate judge. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). The court must review *de novo* those portions of a magistrate judge’s recommendation to which a party objects. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). But neither 28 U.S.C. § 636 nor Federal Rule of Civil Procedure 72 requires a district court to review the recommendation of a magistrate judge to which no objections are raised. See *Thomas v. Arn*, 474 U.S. 140, 149-50 (1985).

Although not required to do so in light of the above, this Court nevertheless has reviewed Judge McCarthy’s R&Rs as well as the parties’ submissions to him. Based on that review and the absence of any objections, the Court accepts and adopts Judge McCarthy’s recommendations.

For the reasons stated above and in the R&Rs, the Morelands’ motion for summary judgment, Docket Item 132, is DENIED; and Sportsman’s motion for summary judgment, Docket Item 110, is GRANTED in part and DENIED in part. The Morelands’ claims for manufacturing defect, breach of warranty, and punitive damages are dismissed. Their other claims survive.

The parties shall contact the Court within 30 days of the date of this order to schedule a conference to set a trial date.

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<sup>1</sup> Judge McCarthy issued the first R&R on May 30, 2024, and ordered the deadline for objections to be “held in abeyance pending issuance” of the second R&R. Docket Item 172 at 4. He issued the second R&R on June 28, 2024, and objections to both R&Rs were due two weeks later, on July 12, 2024. Docket Item 174 at 7.

SO ORDERED.

Dated: July 22, 2024  
Buffalo, New York

**/s/ Lawrence J. Vilardo**  
LAWRENCE J. VILARDO  
UNITED STATES DISTRICT JUDGE